

MONTANA LEGISLATIVE HISTORY

Bill Did Not Pass

Chapter            1986 (interim Sp. Sess)

Bill H   9   S            Original bill & history   C  

H. Committee on Judiciary

S. Committee on Public Health

Hearing Date(s) 3-27   C  

Hearing Date(s) 3-28   C  

             C  

             C  

             C  

             C  

             C  

             C  

Date Out              C  

rpt. 3/27

rpt 3/28 not consumed

Did this bill originate in an interim committee?    Yes    No

Committee                                 

Report                                 

Jnt House Judiciary Committee and House  
Human Services Subcommittee meeting 3/26

# HOUSE FINAL STATUS

4/07 SIGNED BY GOVERNOR  
EFFECTIVE DATE: 4/07/86

HB 9 INTRODUCED BY WINSLOW, ET AL.  
AMEND CONSTITUTION RELATING TO LEVEL AND DURATION OF  
ECONOMIC ASSISTANCE

3/24	INTRODUCED		
3/24	REFERRED TO JUDICIARY		
3/26	HEARING		
3/27	COMMITTEE REPORT-BILL PASS AS AMENDED		
3/27	2ND READING PASS	61	39
3/27	3RD READING PASS	60	40
	TRANSMITTED TO SENATE		
3/28	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
3/28	HEARING		
3/28	COMMITTEE REPORT-BE NOT CONCURRED IN		
3/28	COMMITTEE REPORT ADOPTED	26	22
3/28	2ND READING CONCURRED	32	17
3/28	3RD READING CONCURRED	32	18
(BILL TO AMEND CONSTITUTION FAILED TO RECEIVE REQUIRED 2/3 VOTE OF LEGISLATURE) BILL KILLED			

HB 10 INTRODUCED BY SCHULTZ, NEUMAN, ET AL.  
APPROPRIATION FOR AGRICULTURAL PRODUCTION LOAN LINKED  
DEPOSIT PROGRAM

3/25	INTRODUCED		
3/25	REFERRED TO APPROPRIATIONS		
3/26	HEARING		
3/27	COMMITTEE REPORT-BILL DO PASS		
3/27	2ND READING PASS	99	0
3/27	3RD READING PASS	99	0
	TRANSMITTED TO SENATE		
3/28	REFERRED TO FINANCE & CLAIMS		
3/28	COMMITTEE REPORT-BILL CONCURRED		
3/28	2ND READING CONCURRED	47	2
3/28	3RD READING CONCURRED	46	3
	RETURNED TO HOUSE		
3/29	SIGNED BY SPEAKER		
4/03	SIGNED BY PRESIDENT		
4/04	TRANSMITTED TO GOVERNOR		
4/07	SIGNED BY GOVERNOR		
EFFECTIVE DATE: 4/07/86			

HB 11 INTRODUCED BY HOLLIDAY, ET AL.  
CREATING A COUNSELING AND ASSISTANCE PROGRAM TO AID  
DISTRESSED FARMERS

3/25	INTRODUCED		
3/25	REFERRED TO APPROPRIATIONS		
3/25	FISCAL NOTE REQUESTED		
3/25	FISCAL NOTE RECEIVED		
3/26	HEARING		
3/27	STATEMENT OF INTENT ATTACHED		

V

MINUTES OF THE MEETING  
JOINT MEETING OF THE JUDICIARY COMMITTEE AND  
THE HUMAN SERVICES SUBCOMMITTEE  
SPECIAL SESSION II OF THE 49TH LEGISLATIVE SESSION  
HOUSE OF REPRESENTATIVES

March 26, 1986

The first meeting of the Judiciary Committee and the Human Services Subcommittee was called to order by Chairman Tom Hannah in room 325 of the capitol at 8:03 a.m.

ROLL CALL: All members were present with the exception of Representative Bradley and Senator Story. Also present were Brenda Desmond, Staff Attorney for the Legislative Council, Marcene Lynn, Secretary for Judiciary Committee, and Alice Omang, Secretary for the Human Services Subcommittee.

Tape 1-1-A:50

CONSIDERATION OF HOUSE BILL 9: Representative Winslow, District 89, Billings, gave a brief history of the status of the welfare program in the state of Montana. He advised that the counties had charge of the welfare programs until about 1983; in 1983, many of the counties were concerned that they could not keep up with the costs of handling the program; a bill was passed that gave the counties the ability to have their welfare programs picked up by the state by assessing 12 mills, which went to the state and the state picked up all the costs. He indicated that the reason they are faced with the decision they have today is because of increased case loads and increased costs. He noted that there has been an increase of 42% in the case loads and a 47% increase in costs since 1983. He stated that last year during the session, they attempted to restrict benefits by denying the able-bodied under 35 to not receive benefits and those between 35 and 50 would receive benefits up to three months per year. He advised that that ruling was overturned by the supreme court. He contended that Montana was the only state that he could find that takes care of all of the able-bodied. He informed the committees that this bill would amend the constitution and give the legislature the authority to look at all needs and set the priorities.

PROPOSERS: (143) Dave Lewis, Director of the Department of Social and Rehabilitation Services, testified that

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March 26, 1986  
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the only way to settle all the various issues that continue to plague them and to plague the recipients of the programs is to clearly establish the fact that the legislature does have the right to set limits on the programs. They have concluded, he said, that the only way to do that is to amend the constitution. He noted that the issues are broadening rather rapidly and they have had various class-action suits other than the general assistance program.

Russ Cater, Chief Legal Counsel for the Department of Social and Rehabilitation Services, offered testimony in support of this bill. See Exhibit 1. (165)

There were no further proponents.

OPPONENTS: (300) John Ortwein, Director of the Montana Catholic Conference, gave a statement in opposition to this bill. See Exhibit 2.

Adelle Fine, representing the Women's Law Caucus, (340), a student organization at the University of Montana Law School, opposed this bill. See Exhibit 3.

George Harper, a member of the constitutional convention of 1972, declared that the constitution prescribes some priorities as a framework in which the legislature must operate on the behalf of the people and one of those priorities is the matter of assistance to people who are in need in our state family and that is why the constitutional convention said, "shall". He explained that the question of "shall" versus "may" arose at the convention and was overwhelmingly defeated and one reason was because the 1889 constitution also said "shall".

(485) Sue Fifield, representing the Montana Low Income Coalition, stated that they feel that the legislature already has the right to limit welfare benefits; that Montana is a state that has been proud of taking care of their own; and this bill challenges the integrity of the constitution and those who spent so many hours writing it.

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(529) Nancy, Collins, Co-Chairperson of the Women's Lobbyist Fund, submitted testimony to the committee in opposition to this bill. See Exhibit 4.

(570) Debra Floor, representing the Butte Community Union, said that she personally felt that if they did have a constitutional amendment on this, that this would be like giving up and she did not feel as though the legislature should give up on them and she feels they are worthwhile people.

(583) Earl Reilly, representing the Montana Senior Citizens' Association, indicated that they did not think that amending the constitution would solve anything and that there are a lot of people out of work and it does not seem to be getting any better. He asked that they not pass this bill.

(590) Cecil Barner, owner of Barner Management Firm in Missoula, and a contract administrator of the Missoula Housing Authority, informed the committee that he was a third-generation native Montanan; he is very proud of that fact and one of the reasons he is proud is because in Montana, they have always had a tradition in this state of not letting anyone who is hungry be left unfed and no one is left sleeping in the cold. He continued that for twenty years he has grown up with this tradition and now he sees that this attitude is changing due to economics and he felt that they have to find a way to take care of the welfare problems in our state without changing the constitution.

(653) Jim Murry, Executive Secretary of the Montana State AFL-CIO, offered testimony in opposition to this bill. See Exhibit 5.

Tape 1-1-B:09

Don Peoples, Chief Executive for Butte-Silver-Bow, expressed his concern about the path that this proposed constitutional amendment is taking. He advised that he comes from a community that has had more than its share of problems and there is an erroneous misconception that people on welfare are people that just don't

want to find a job. He informed the committee that there were over 500 applications for 20 positions on a sidewalk construction job and these people are lined up in his office week after week looking for opportunities to go to work. He felt that a constitutional amendment was not the way to address the problem.

(34) Del Rodrigues, Vice-Chairman of the Montana Peoples' Action, said that he knows people right now that are on general assistance that would be out on the streets right now if it were not for the supreme court decision.

Wade Wilkison, Director of Senior Citizens' Advocates, noted that when there are big problems, people jump for big solutions even if these solutions are not totally appropriate. He urged the committee to look at pointed solutions.

(53) Greg Sanders, member of the Concerned Citizens' Coalition, stated that unemployment in Great Falls is currently at 9.5% and he is currently on general assistance and hopes not to be on it very long. He felt that if other states took the same punitive approach to people without jobs, people would be shuffled from state to state because no state has full employment.

(76) Judith Carlson, representing the Montana Chapter of the National Association of Social Workers, NASW, offered testimony in opposition to this bill. See Exhibit 6.

(97) Steve Waldron, representing the Montana Council of Regional Mental Health Boards, noted that the bill appears to remove the requirement that the state made for the disabled; and although they are concerned about those with mental disabilities, it would also include such things as developmentally disabled. He explained that there was an assumption that people on welfare were lazy and leeches on the system and that if they were made to work for their benefits, they would not work for them. He continued that with the workfare program, the exact opposite happened and the workfare program was a success. He said that the individuals who were able bodied were happy to work and felt better about themselves. He contended that a

goodly number of them simply were not job ready, so he questioned whether or not these people who are classed as able-bodied are in fact able-bodied.

(137) Dawn DeWolf, representing the Montana Association of Rehabilitation, urged the committee to vote no on this bill.

Alfred Wilson, representing the Anaconda Concerned Citizens' Group, said they oppose this bill.

Jim Smith, representing the Human Resource Development Council, advised that the SRS budget totals \$240 million; and for the sake of a \$4 million appropriation for general assistance, they appear to be willing to be putting the rest of these funds and the people served by them in severe risk by passing this bill.

Ann Barnes, representing LIGHT in Missoula, indicated that they also oppose this bill.

There were no further opponents.

Representative Winslow stated that it is a difficult decision when they have to enter any kind of limitation of benefits that people are presently relying on. He contended that it is the responsibility of the legislature to look at benefit levels and establish them. He recognized the needs of the people across the state, but he does believe that they have to set some limits. He noted that the legislature has to balance the budget and in order to do this, they have to have the ability to establish limits and duration on what benefits they can and should support. He advised that the states around Montana (Wyoming, North Dakota, South Dakota, etc.) do not take care of the able-bodied and he feels that some of the increased case load is from these people coming to Montana for that reason. He stated that 40% of these people are healthy, under the age of 26 years and are males.

(270) QUESTIONS ON HOUSE BILL 9: Representative Gould asked if there could be any definitions made as far as disabilities and developmentally disabled and how severe they must be before they can qualify for some type of assistance.

Mr. Lewis responded that the programs for the disabled and developmentally disabled are now limited by the legislature to the extent of appropriations and the intent of this amendment is that those programs not become entitlements. He advised that they have a waiting list of 900 people now for DD services. He noted that, if this becomes an entitlement program, they would be required to provide services for all of the people who now need services.

Representative Addy asked if the courts had looked at the question of able-bodied against non-able-bodied.

Mr. Cater replied that he believed that the court would throw out legislation under the current test if the legislature decided to terminate able-bodied people. He thought that it might pass the reasonable basis test. He advised that the middle-tier test is a two-tier test and the first test is whether it is reasonable. He felt there were some reasonable justifications for terminating able-bodied people, but there are other people who would disagree on that. He did not feel that it would pass the second part of the middle-tier test, which is balancing the state interest versus the misfortunate person in need.

Representative Addy asked why there was an increase of 42% in case loads and 47% in costs.

Mr. Lewis answered that it is difficult to speculate as to why the case loads are growing - a lot would be due to an increase in unemployment.

Representative Addy asked how many people would be affected by the kind of restrictions that would be on and what would be his speculation as to what would happen to those people.

Mr. Lewis responded that the total number that would be affected would be between 8 and 900, according to their estimates. He noted that in Billings, there are only about 50 or 55 people in Yellowstone County on general assistance, because the county commissioners are fairly



restrictive as to who should be on general assistance; but in Cascade County, at the present time, they have 650 people. He believed that if you compared the two counties, he doubted that there would be any more people in the streets or any more people hungry in Billings than in Cascade County. He felt that it was difficult to draw any assumptions as to what the result in a change in the program might be.

(450)

Representative Rehberg asked why the word "inhabitant" had been struck from the constitution and are they setting the groundwork for making a residency requirement if they so wish.

Mr. Cater responded that he felt that that was a step in that direction, but the U. S. supreme court has indicated that they cannot have a durational residency requirement; however, as of today, they have not said you cannot have a residency requirement.

Representative Rapp-Svrcek questioned Ms. Fifield about her comment that workfare is a limit on welfare.

Ms. Fifield answered that they work for that benefit - it is not just handed to them - and if for some reason, they can't make it to work, they get docked; if they earn any income, it is taken off their benefits and there are more limits. She contended that there are more limits that could be set without changing the constitution.

Representative Rapp-Svrcek asked if she felt that workfare was an unjustifiable limit on welfare.

Ms. Fifield replied, "No, people want to work for what they get - believe me, they do. Sometimes, being low-income, transportation is not always what it should be and your health isn't always what it should be and there are times when there is no way you can get around it, but there are limits as far as you do work for your check - you don't just get it and most people are more than willing to work for it." She contended further that if

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the jobs were developed and if there were adequate training, it would cut down on the spending of welfare funds and would give people jobs and would give them their dignity back.

Representative Rapp-Svrcek asked if the goal was to conserve costs and to save money and probably better use the money that is there.

Mr. Lewis answered that their goal is to end this seemingly endless litigation on the issue of whether or not we can control the budgets for public assistance. He advised that for them to limit costs, they have to have some tools with which to do that and they don't feel that that can be done under the present constitution.

Representative Rapp-Svrcek wondered if this is the only way to control this welfare program.

Mr. Lewis responded that they are, at the present time, working on some proposals for pilot projects in the area of trying to help people get jobs, but he cannot predict whether those will be successful as far as reducing case loads or whatever.

Representative Cobb asked why are the people so afraid that the legislature is going to do something terrible and they do not like them to have any discretion in this matter.

Mr. Ortwein replied that in changing the constitution, this would be a change in intent and also the makeup of the legislature can change so much. He noted that as dollars get short, this could be very open ended.

Representative Cobb questioned as to whether there was a guarantee that the supreme court could not change its makeup in a few years also.

Mr. Ortwein responded that that is true.

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Representative Cobb asked if they pass this amendment, is there any guarantee that the supreme court is going to lower their rational basis test.

Mr. Cater responded that, with the amendments he has recommended, he believes that the supreme court will have to lower that test because he put the test right in the amendment.

Representative Cobb asked if it was not there and that portion was left out, was there any guarantee that they would use the test they are using now or a lesser test.

Mr. Cater replied that that was his fear with the bill the way it is currently proposed and that the supreme court could say that the bill deals with article XII, whereas this amendment goes further and talks about equal protection and the rational basis test.

(640) Representative Cobb wondered if they left the amendment out, would they probably use a lesser test than they are using right now.

Mr. Cater responded that he thought the supreme court would still mandate a middle-tier test.

Representative Cobb asked if this would be less than the test they give right now.

Mr. Cater replied that it is possible, but he did not believe they would change.

Representative Cobb asked if it would depend on who is on the supreme court.

Mr. Cater replied, "Yes."

Representative Miles asked Neil Hayden from the Montana Legal Services of his opinion on the middle-tier test and the amendment.

Mr. Hayden said he was not prepared to discuss the amendments, but his impression is that they seem to be making a "whipping board" out of the supreme court.

Tape 1-2-A:00

Representative Spaeth asked what they would be looking at if they do present this to the voters of Montana and they do pass it, and what does he foresee as doing in January of 1987.

Representative Winslow responded that they are still going to have to look at the problems and the levels of duration. He admitted that they still have some questions that need to be answered as to how they establish those levels of duration, and there is the question of age basis. He said they would have the sense of the people and they would have that right.

Representative Spaeth asked if the work bill was successful, would they really need this constitutional amendment.

Representative Winslow replied that they did not know how effective this workfare program is going to be. He indicated that many states have implemented this type of program and have had substantial effects and if this constitutional amendment is passed, it does not mean that they are going to change anything. They are still going to have to come in the next legislative session and look at what kind of changes need to be made, he concluded, and if the work program is so successful that the numbers have decreased, then maybe nothing will come out of the next legislative session.

Representative O'Hara asked what the differences in the limitations of welfare requirements are between Cascade County and Yellowstone County.

Mr. Lewis replied that they establish the rules and regulations and they have to follow carefully the state's rules on these issues and he is not sure why Yellowstone County has such a low case load, but he is aware that they make a real effort to hold it down - the county commissioners are concerned with holding it down, but he does not know what methods they use.



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Rep. Krueger noted that the supreme court did not say that they could not establish levels, they just said that they could not be arbitrary in their determinations on this and he asked Mr. Cater to comment on this.

Mr. Cater responded that he would never recommend to the legislature that they go back to the same age type criteria even if they do change the constitution. He advised that the basis for that legislation was primarily due to the fact that the state of Pennsylvania had enacted an age limitation, which was similar to HB 843, and that was upheld by the federal circuit court; there was testimony by low-income people that because of their age they had been discriminated against, witnesses indicated that older people would have a harder time; and all this was admitted in court, so he does not feel that this was completely arbitrary.

He further informed the committee that just last week he received notices from the legal services that they believe that under this middle-tier test, it is essential that all low-income people receive annual eye checkups, semi-annual dental checkups and he felt that this is taking away the discretion of the legislature and may be the next court challenge.

Rep. Eudaily asked if it was necessary to put the word "discretion" in his amendments. Mr. Cater responded by saying that the reason he left it out is because in the current bill there is an "against" clause. If the committee voted against it, in effect the committee would be against giving the legislature the discretion to provide the welfare. This could cause some confusion.

There being no further questions, the hearing on this bill closed, and the members of the Human Services Subcommittee were excused.

(Chairman Hannah had previously invited members from the House Business and Labor Committee to participate in the hearing on HB 7.)

CONSIDERATION OF HOUSE BILL NO. 7: Rep. Francis Bardanouve, House District #16, sponsor of this bill stated that HB 7 wasn't necessarily his bill but rather it is a bill that was put together by the citizens of Montana. HB 7 is a permissive piece of legislation, and if the bill passes, it will enable the 1987 legislature and subsequent legislatures to set limits as to liability of governmental units. Rep. Bardanouve said this bill doesn't necessarily say the

Exhibit  
HB 9  
Russ Cal  
3/26/86

TESTIMONY OF THE DEPARTMENT OF  
SOCIAL AND REHABILITATION SERVICES  
IN SUPPORT OF HOUSE BILL 9

The Department of Social and Rehabilitation Services supports House Bill 9 which has been introduced by Representative Cal Winslow. This amendment to Article XII, Section 3 of the Montana Constitution is essential in order to provide more discretion to the legislature in the adoption of statutes pertaining to public assistance benefits. On January 16, 1986 the Montana Supreme Court held unconstitutional those provisions of House Bill 843 (passed by the 1985 Montana Legislature) which restricted or denied public assistance to able-bodied persons under age 50 without dependent minor children. In its ruling the court developed a "middle-tier" test which should be applied to all public assistance legislation. This test requires that the state demonstrate two factors:

- 1) that its classification of welfare recipients . . . is reasonable; and
- 2) that its interest in classifying welfare recipients . . . is more important than the people's interest in obtaining welfare benefits.

The court went on to state that there should be a balancing of the rights infringed and the governmental interest to be served by such infringement. Saving money must be balanced against the interest of misfortunate people in receiving financial assistance from the state. For example, if the state were to terminate all "able-bodied" persons from the public assistance program it might meet the first portion of the court's test regarding "reasonableness". It is questionable, however, whether such legislation

would meet the second portion of the test which requires a balancing of the misfortunate welfare recipient's interest in receiving benefits with the state's interest in saving money and encouraging employment.

The Montana Supreme Court is the first court in the nation to establish a middle-tier (heightened scrutiny) test for welfare legislation. It is believed that the court will apply this test not only to the state general relief program but also to federal welfare programs (e.g. medicaid, AFDC, food stamps, etc.) administered by our state. Montana is not required by federal law to adopt these programs but if it does, the federal government will only reimburse the state if eligibility is determined in accordance with federal rules and regulations.<sup>1</sup> In many instances it is unlikely that the federal eligibility rules would pass the higher middle-tier (heightened scrutiny) test adopted by the Montana Supreme Court. The "supremacy clause" would not preclude the application of the middle-tier test in Montana because the federal programs are optional rather than mandated by federal law. If Montana courts determine that a federal eligibility rules does not meet the higher standard of review, then 100% state funds must be used to pay for equivalent welfare assistance.

While House Bill 9 is a step in the right direction, SRS does not believe that it is complete enough to provide to the legislature the discretion normally accorded to it in the adoption of state laws. The Montana Supreme Court developed the middle-tiered test not because public assistance is a fundamental

right, nor because the sections in Article XII are prefaced with the word "shall" but rather because welfare assistance is "reference[d] in the Constitution". In order to place welfare assistance in line with the federal Constitution and the decisions of other state and federal courts it is essential that the equal protection test in Article II, Section 4 be returned to that of a "rational" basis test. The attached amendment to House Bill 9 spells out that rational basis test.



PROPOSED AMENDMENT TO HOUSE BILL 9  
Introduced Bill  
(Re: Amendment to Article XII, Section 3  
of the Montana Constitution)

1. Page 1, line 25.  
Following: "discretion"  
Strike: "designate any level and duration of"  
Insert: "provide such"
2. Page 2.  
Following: line 4  
Insert: (2) "The legislature may in its discretion set eligibility criteria for programs and services, admission to institutions and facilities as well as the duration and level of benefits and services. A law implementing this section does not violate this Constitution if it is supported by any rational basis."  
  
Renumber: subsequent sections
3. Page 2, line 14.  
Following: "legislature to"  
Strike: Remainder of line 14 and all of line 15.  
Insert: "Restrict the scope and duration of welfare programs."
4. Page 2, line 17.  
Following: "legislature to"  
Strike: Remainder of line 17 and all of line 18.  
Insert: "Restrict the scope and duration of welfare programs."

Submitted at the request of  
Department of Social and  
Rehabilitation Services

/        /      FOR amending the constitution to allow the legislature  
? discretion to restrict the scope and duration of wel-  
fare programs.

        
/        /      AGAINST amending the constitution to allow the legisla-  
? ture discretion to restrict the scope and duration of  
welfare programs.

Exhibit 2  
HB-9  
3/26/86



# Montana Catholic Conference

March 26, 1986

CHAIRMAN HANNAH AND MEMBERS OF THE HOUSE JUDICIARY COMMITTEE:

I am John Ortwein, director of the Montana Catholic Conference.

Several days ago each of you received a letter from the Conference asking you to use the issues of human rights and human dignity as your guides as you consider economic assistance to those in need. I am here today to again ask for these considerations.

The responsibility for alleviating the plight of the poor falls upon all members of society. As individuals, all citizens have a duty to assist the poor through acts of charity and personal commitment. But private charity and voluntary action are not sufficient. We also carry out our moral responsibility to help the poor by working collectively through government to establish just and effective public policies. It is with this thought in mind that the Montana Catholic Conference is here in opposition House Bill 9.

The process of placing the constitutional amendment on the November ballot takes the argument out of the public debate. It is our belief that most Montana residents voting on the proposed amendment will not have the facts and figures necessary to make an informed vote.

The public perception is that many of those on welfare would not work if given the opportunity. In the Great Falls Tribune of March 25, 1986, was an article entitled "Job Applicants flood service". The article states that when Buttrey Foods advertised for 75-80 job openings in its new store in Great Falls, about 1300 persons responded. Herb Waltermire, placement supervisor for the Great Falls Job Service office, said, "It's not uncommon for somebody to run an advertisement in the paper for one or two jobs and get 200 or 300 applicants." I have included a copy of this article with my testimony. Again, we are concerned that the perception of the public does not bear up well under the facts.

We would ask that this committee vote "no" on House Bill 9.



# Job applicants flood service

By JAY GOLEY  
Tribune Business Editor

Whether it's a testimony to newspaper advertising or to hard times in Great Falls, when Buttrey Foods advertised this month to fill 75 to 80 jobs in its new store, about 1,300 people responded.

Herb Waltermire, placement supervisor for the Great Falls Job Service office, said applications are still coming in response to the advertisements, which appeared in paper several times.

In another healthy response to a modest offer of jobs, ShopKo, the Green Bay, Wis., retailer that is  
See JOBS, 2-A.

## Jobs

From 1-A

opening a store in the Riverview area this summer, advertised to hire 30 bookkeepers and receiving clerks and attracted more than 300 applicants.

Waltermire said Job Service is bracing for an influx of applicants next week because ShopKo plans another advertisement this weekend to fill 260 more jobs. The store will hire about 300 people altogether, Waltermire said.

There is no question, said Waltermire, that in Great Falls, "there are a lot of people looking for work."

Most of the applicants Job Service has screened for Buttrey and ShopKo so far have been people who already were registered for jobs at Job Service. Waltermire said a number are working, but are looking for better jobs. But in a town with unemployment at about 9 percent, a substantial percentage are simply out of work.

Job Service keeps no records on sex or age of the persons applying for the jobs, but Waltermire said there appear to have been more

women applying for the supermarket and discount store jobs so far.

Job Service does not hire anyone, but screens applicants for its business clients. Waltermire said that perhaps 200-250 applicants will be referred to Buttrey for the 75 or so jobs that eventually will be filled.

The supermarket chain will perform its own screening on the pool of applicants referred to it and may ask for more, Waltermire said.

Employers don't pay directly for the service, but pay a federal tax that supports Job Service activities, Waltermire said. Screening is available to any employer.

He said some of the people applying for jobs will be well-qualified, some will have marginal qualifications and some won't have any at all.

In Great Falls, at least, it is common for large numbers of people to turn out for jobs, Waltermire said.

"It's not uncommon for somebody to run an advertisement in the paper for one or two jobs and get 200 or 300 applicants," he said.

Women's Law Caucus  
Testimony in opposition to HB 9

Exhibit 3  
HB-9  
3/26/81  
Adele Fine

Good morning ~~Madam Chair~~/Mr. Chairman and members of the  
~~Human Services and Judiciary Committees~~:

My name is Adele Fine. I am here to speak to you on behalf of the Women's Law Caucus, a student organization at the University of Montana Law School. We wish to voice our opposition to House Bill 9, which seeks to amend Article XII, Section 3(3) of the Montana Constitution.

Montanans, like many Americans, have an easy time thinking in terms of liberty, autonomy, freedom, and individualism. But for some reason, we have more difficulty when it comes to thinking in terms of taking care of others who, as stated in Article XII, "by reason of age, infirmities, or misfortune may have need for the aid of society." This provision of our state constitution is so highly commendable precisely because it reminds us of what we already know when we stop to reflect, that is, that those of us who are better off have an obligation to care for those who are worse off, and who may need our help from time to time.

We have acknowledged this obligation to help each other publicly since the adoption of the first state constitution in 1889. Almost 100 years later, the citizens of Montana reaffirmed their commitment to help poor people by adopting the present constitutional provision. Prior to its adoption, some Con Con delegates expressed concern that the language of this provision would create an absolute right to welfare assistance (but this concern has turned out to be unfounded), and that the Legislature would have no discretion in implementing welfare programs, (also untrue.) Despite these concerns, the majority of the delegates decided to go with the current provision, not because they wanted to put the Legislature in chains, but because they wanted to be certain that Montana's obligation to its less fortunate citizens was stated clearly and unambiguously in the constitution.

This brings us up to the present. At this point, I would like to discuss the case of Butte Community Union v. Lewis, in which the Montana Supreme Court affirmed the lower court grant of an injunction against the Dept. of SKS, thereby prohibiting SRS from implementing the infamous House Bill 843. This case is important because, ~~although I have not heard anyone say it here, I think it is logical to assume that~~ one of the primary purposes of House Bill 9 is to protect the Legislature from having other welfare statutes it enacts overturned by the Montana Supreme Court. We feel, frankly, that this <sup>proposed</sup> course of action is unwise.

In the Butte Community Union case, the Supreme Court stated explicitly that whatever else is was, the right to welfare assistance was not a fundamental right. Underlying this assertion was the Court's recognition that the State needs to have some discretionary power in the area of welfare assistance; it needs some flexibility given its finite resources. At the other extreme, the Supreme Court also said that the "rational basis" test,

which is the test traditionally applied by federal courts and the United States Supreme Court in their analyses of welfare benefit cases, was inappropriate in the Butte Community Union case. It found it to be inappropriate because the citizens of Montana had explicitly mentioned their obligation to help poor people in the state constitution. The Court rightly concluded that, if the obligation was important enough to us that we decided to mention it specifically, then any statute seeking to diminish that obligation deserved closer scrutiny.

The Supreme Court resolved the issue by adopting a mid-level scrutiny test. This is really nothing more than a "rational basis" test with teeth, because it requires the state to justify its classifications or limitations with a factual showing of their reasonableness.

The mid-level scrutiny test is essentially a fairness test. It balances the state's need to be flexible evenly with the poor person's need for economic assistance. It and Article XII of the Constitution ask the Legislature simply to get all the facts, to think twice, before it decides to pull the plug on a welfare recipient. What this proposed constitutional amendment would do is tip the balance so that the State's discretionary power would be virtually supreme, while the poor person's need for assistance would rank much lower on the scale of importance. This, in our view, represents an unfortunate retreat from our longstanding commitment of almost 100 years to helping others.

We should welcome the Court's mid-level scrutiny test and not try to circumvent it. This is especially important when we remember what is at stake for poor people in this issue. The \$212.00 per month that a single person on General Assistance receives is literally in many cases the difference between having a roof over <sup>his</sup> head and sleeping under a bridge. Even at the federal level, where the government is experiencing a deficit of almost incomprehensible proportions, the Gramm-Rudman bill exempted federally-funded welfare programs from cuts. Congress recognized that one, programs like AFDC, WIC, Child Nutrition, Food Stamps, Medicaid and SSI had already been cut to the bone and could not be cut further without inflicting palpable harm on the recipients of those benefits, and two, these benefits provide for life's basic necessities, the stuff people need to survive in the world. Programs like General Assistance in Montana serve the same purpose. The mid-level scrutiny test protects this interest in survival from getting lost in a budget panic, when it becomes easier for us to abrogate our long-term responsibilities in the interest of short-term crisis management.

Speaking of budget panics, there is a tendency that we hope you as legislators will guard against in your deliberations on the proposed constitutional amendment at this session. The tendency <sup>has been</sup> ~~was~~ stated by Justice Marshall of the United States Supreme Court, who said:

"It is widely yet erroneously believed that recipients of public assistance have little desire to become self-supporting. Because the recipients of public assistance

generally lack substantial political influence, state legislators may find it expedient to accede to pressures generated by misconceptions."

What Justice Marshall was referring to is a general tendency in our society to regard being poor as if it were a sin of some sort. It is especially easy <sup>to be guilty, to</sup> succumb to this basically unfounded prejudice when the State is experiencing financial difficulties. Article XII as it is presently written and the mid-level scrutiny test aid us in avoiding bad habits because it forces us to evaluate our biases to see if they are really legitimate bases for action. We would hope that you will take Justice Marshall's admonition to heart and examine how much of your own willingness and the willingness of your constituents to amend the Constitution is based on misconceptions about poverty in Montana and America as a whole.

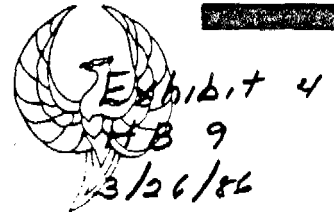
One final comment. You may be thinking that it is all very fine to speak in such lofty terms about the value of our present constitution, but that such talk still does not answer the question, what about the budget? We would respond to that question with another question. And that is, why don't we examine what we do and do not subsidize at the state level to determine whether the benefits and burdens of such subsidies really do fall out fairly? Last session the legislature had a chance to eliminate in some instances the state tax deduction for federal income taxes paid. The elimination of this deduction, which is a form of state subsidization, would have raised about 26 million dollars. The question we pose to you is, how much of a hardship would the elimination of that tax deduction <sup>have</sup> imposed on you compared to the hardship a CA recipient would suffer because the \$212.00 standing between them and the bed under the bridge was taken away? How much of a benefit is gained by lowering Burlington Northern's taxes, again, another form of state subsidization, compared to the hardship that CA recipient would suffer?

These questions and the points raised earlier revolve around issues of fairness, of remaining steadfast to longstanding commitments, and of guarding against the tendency to ignore those who traditionally have not had much political influence. We of the Women's Law Caucus ask you not to retreat from the principles lying at the heart of Article XII, and to embrace the Supreme Court's mid-level scrutiny test as a valuable tool in reconciling competing interests fairly.

We urge you to vote DO NOT PASS on House Bill <sup>9</sup><sub>3</sub>. Thank you.

# WOMEN'S LOBBYIST FUND

Box 1099  
Helena, MT 59624  
449-7917



March 26, 1986

Testimony for the House Judiciary Committee  
Submitted by Nancy Collins, Co-Chair, WLF

The Women's Lobbyist Fund opposes a constitutional amendment to allow the legislature greater discretion in determining qualifications for, and limitations on, economic assistance and social and rehabilitative services.

Montana's constitution clearly provides for our citizens who have need of assistance from society. That commitment must stand, regardless of economic and political pressures to compromise it.

The principle stated in the constitution is one which benefits not only the poor in Montana. It is a reflection of our commitment to a basic quality of life for every Montanan. We ratified this principle, as a society which wants to be humane, fair and responsible.

As women, we well understand the necessity of protecting the rights of any group which experiences economic and social discrimination. The constitution must not be changed because there is a budget crisis.

We are also confident that policymakers, and the Montana public, can come up with good, creative solutions to the needs of the economically unfortunate. The proposals that SRS and the Low Income Coalition are working on for job search and training options are an example.

The poor in Montana are increasingly women and children. General Assistance makes a critical difference for individual women. There is the example of a middle-aged woman, whose children were grown, who was a victim of spouse abuse. GA enabled her to pay the rent on a place of her own so she could get out of the abusive situation.

Or there is another case of a young woman from Butte who was earning her living through prostitution. She wanted to get out of that economic trap, and GA provided the means for her to make a transition to a more stable and promising line of work.

There is also the woman whose age, appearance and chronic powerlessness, both economically and socially, make her an outcast. GA is her livelihood. She has no other options.

The Women's Lobbyist Fund urges you to very thoughtfully assess the correctness of proposing constitutional change as a way of providing flexibility on GA funding. We also ask that the legislature make a clear commitment to the ongoing needs of Montana's poor in prioritizing state funds.





Exhibit 5  
HB 9  
3/26/86

Box 1176, Helena, Montana

JAMES W. MURRY  
EXECUTIVE SECRETARY

ZIP CODE 59624  
406/442-1708

TESTIMONY OF JIM MURRY, BEFORE THE HOUSE JUDICIARY COMMITTEE ON HOUSE BILL 9  
FOR A CONSTITUTIONAL AMENDMENT RESTRICTING PUBLIC ASSISTANCE -- MARCH 26, 1986

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Mr. Chairman and members of the Committee, my name is Jim Murry, and I'm appearing here on behalf of the Montana State AFL-CIO in opposition to House Bill 9.

There is no doubt that we are facing hard economic times, both here in Montana and across the country. The very fact that the Legislature is meeting to discuss curtailing welfare benefits shows that there is an economic crisis. If only a few people needed public assistance, there would be no question that Montana has the ability to support the needy.

Now Montana's ability to support those who need help is being called into question. But the question is not really can we help, but how can we not help?

How can we not help people in need? This question comes at a time when more and more people are losing their jobs, losing their businesses, losing their farms and ranches, while being forced to seek public assistance just to survive.

According to an Associated Press story that appeared last Monday, only 18,000 new jobs will be created in Montana in the 1984 - 1990 period. And the Montana Department of Labor and Industry projects nearly half of those jobs will be in the lower-paying service sector.

Members of the committee, there are now -- today -- almost 36,000 Montanans "officially" out of work. That means there are two unemployed workers for every new job to be created from now until 1990.

Here in Montana, the latest figures show 35,700 people are unemployed -- a 9.3 percent unemployment rate.

But these figures don't include those workers who are so discouraged they no longer even look for work, and they don't include those workers who work part-time because full-time work is unavailable.

When you add those individuals to the "officially" unemployed, you get the real unemployment rate. In Montana last month, the real unemployment was 16.74 percent, or 63,913 people. To put that number into perspective, that is equal to the combined populations of Missoula, Malta, Lewistown, Libby, Ennis, Polson, Thompson Falls, Cut Bank and my hometown of Laurel.

What are these people to do? Some suggest they move to other states to look for work -- places like Texas, or California or Florida. But the unemployment problem is there as well. In those three states, more than 3 million people are unemployed, underemployed or too discouraged to look for work any longer.

Unemployed Montanans are not going to find jobs outside the state. Nationwide, there are 8.5 million people "officially" out of work. But real unemployment means more than 15 million Americans are unemployed, underemployed or too discouraged to seek work.

Not only is there a misconception about how many people truly are out of work, but there is a misunderstanding of what kind of protection these unemployed workers have. A study by the National AFL-CIO showed that 10 years ago, 75 percent of the unemployed workers received unemployment insurance compensation. By 1984, that figure dropped to only 26 percent.

In Montana, a similar situation exists. As of 1985, only 29 percent of unemployed workers received unemployment insurance benefits.

So a desperate need for public assistance has been growing. Since 1980, general assistance caseloads have increased 250 percent.

The issue before us today is, are we going to turn our backs on Montanans in need?

Mr. Chairman and members of the Committee, the Montana Constitution is a good one. It establishes the welfare of people as its priority. It's not a document to be treated lightly or tampered with indiscriminately.

We acknowledge the financial problems facing the state of Montana today. We've given you numbers that you can attach to the faces of Montanans who are in trouble today.

We urge you, in your deliberations, not to act in haste in amending our Constitution.

## **New jobs to pay less, says report**

BILLINGS (AP) — The state Department of Labor and Industry is projecting 18,000 jobs will be created in the 1984-1990 period, but nearly half (8,000) will be in the lower-paying service sector.

Workers in the retail/wholesale sector earned an average of \$202.01 in December 1985, the latest figure available. Many of those workers put in fewer hours than their counterparts in other industries.

The highest paid Montana workers in 1985's fourth quarter were in the metal industry (smelting), with weekly salaries averaging \$609. Miners were in second place with \$503, and contract construction workers were third at \$485 a week.

Overall, Montana's private sector workers earned an average of \$287 per week during the fourth quarter and \$290.34 in December.

Yellowstone County led the state in per-capita income. The county's residents earned an average of \$12,300 last year, compared to \$10,500 statewide.

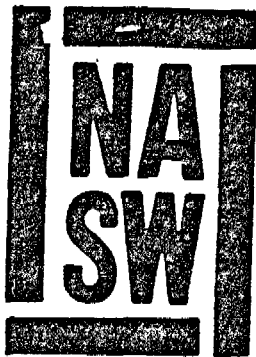


Exhibit 6  
HB 9  
3/24/86

# National Association of Social Workers



TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE ON HB 3 & 9  
PROPOSED CONSTITUTIONAL AMENDMENTS ON ARTICLE XII Sec. 3

March 26, 1986

I am Judith H. Carlson speaking for the Montana Chapter of the National Association of Social Workers, NASW. We oppose any constitutional amendment whose purpose is to dilute this state's commitment to helping people in their time of need.

It appears that legislators in general have been frustrated in their attempts to solve a problem - frustrated by the Supreme Court which has ruled HB 843 from the 49th General Assembly to be unconstitutional. Acting from this frustration and faced with mounting financial crises, proposals are being made to change the Constitution. If this proposal is adopted by this Special Session, and if it passes the public scrutiny in November, I guess the next session of the legislature will severely curtail welfare benefits to the poorest of the poor - and that the "mandate of the people" - the vote on the referendum - will be used as justification. If read carefully, the proposed referendum is worded so as to give discretion to the Legislature. But I predict it will be used to say "the people want us to cut benefits."

There are many welfare programs - for the aged, for the disabled, for dependent children and their parents. But

Testimony on HB 3 & 9

all except General Assistance are essentially federal programs administered by the counties or state. General Assistance is the final safety net - the catchall - for people in need who do not fit anywhere else. These are the poorest of the poor - they are immediately disqualified if they have more than a pittance in resources. Why, in times of financial cutbacks, do we start to pick on those who have the least?

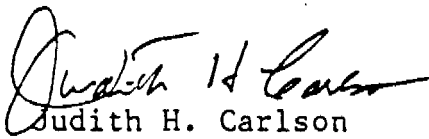
The Legislature does, in my opinion, already have the discretion to set up its welfare program in the way it chooses - as long as it treats everyone equally. It can set the standards for who can get welfare; that is, everyone with less than so much income and with less than so much in assets - is eligible.

The Legislature <sup>(+ does)</sup> can determine how the program is administered - will it be the counties or the state or some combination of the two? It <sup>(+ does)</sup> can decide that everyone must work if they are able as a condition of receipt of welfare. It can (and has) decide that everyone must register to work at the Job Service before becoming eligible.

This Legislature must deal with its budget problems to be sure. Cuts must be made or new revenues found. While sympathizing with that problem, the NASW urges continued study and action on jobs and job training opportunities as the solution to our problem. We urge rejection of the passage of these constitutional amendments which are unneeded

Testimony on HB 3 & 9

which, if passed, will open the door to cutbacks not only in economic assistance but in all areas of social and rehabilitation services.



Judith H. Carlson  
Lobbyist, Montana Chapter, NASW.

MINUTES OF THE MEETING  
JUDICIARY COMMITTEE  
49th LEGISLATIVE SESSION -- SPECIAL SESSION II  
HOUSE OF REPRESENTATIVES

March 27, 1986

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Thursday, March 27, 1986 at 9:10 a.m. in Room 312-3 of the State Capitol.

ROLL CALL: All members were present with the exception of Reps. Brown and Mercer who had been previously excused.

EXECUTIVE SESSION

ACTION AND DISCUSSION ON HB 9: Rep. Cobb moved that HB 9 DO PASS. The motion was seconded by Rep. O'Hara. Rep. Cobb further moved to adopt Amendment #1 of the proposed amendments submitted by the Department of SRS. (Exhibit #1):

Page 1, line 25

Following: "discretion"

Strike: "designate any level and duration of"

Insert: "provide such"

The motion was seconded by Rep. Gould and carried unanimously. Rep. Cobb moved that HB 9 DO PASS AS AMENDED. The motion was seconded by Rep. Keyser. Rep. Cobb explained why he did not like the wording of the other SRS amendments and further explained why he liked this bill. He thinks the legislature needs some discretion in making determinations. However, there is no guarantee if this bill is passed that the legislature will lower the standard of test as to why things are done.

Rep. Spaeth stated he had some problem with the language in the bill because he feels it will restrict the scope and duration of welfare programs.

Rep. Neill said she agrees with the wording of this bill because the bill doesn't use the word, "restrict." She doesn't see anything in this amendment that would indicate that the legislature doesn't care about people; but we as legislators do have a fiscal responsibility.

Rep. Keyser stated he wasn't sure that Amendment #2 as proposed by SRS isn't a good one. Rep. Cobb said he was concerned that 10 years from now a new test will be developed that would need constant revision.

Rep. Gould stated that he supports HB 9 because if something isn't done about limiting economic assistance, there won't be the social dollar available for rehabilitation programs in this state. He feels the bill is definitely necessary for that particular reason and will do the opposite of what the handicapped community thinks it will do. Rep. Hannah also stated his support for the bill. He said without the bill, we will be in the situation of where the questions of the handicapped community and limits in areas of those involved will be decided by the supreme court. He feels that it is the responsibility of the legislature to set these limits.

In response to a question asked by Rep. O'Hara, Mr. Cater stated that he feels the second amendment proposed by the Dept. of SRS (Exhibit 1) is the most critical of all the amendments. He said the supreme court, without this amendment, can still say that the middle tier test will be applied to welfare assistance. The supreme court determined that welfare is very important and it is provided for in the constitution. He feels that without this amendment, nothing is being done at all as the legislature will still not have the discretion to make those determinations.

Rep. O'Hara moved that Amendment #2 be adopted. The motion was seconded by Rep. Eudaily and further discussed. Rep. Cobb again stated his objection to this amendment. He doesn't feel we should completely take the supreme court's power away but rather share it with them. The question was called and the motion FAILED 4-13. (See roll call vote.)

Rep. Krueger doesn't understand why this bill was even introduced. He said the reason we are trying to pass a constitutional amendment is because we are perturbed with the supreme court because they didn't accept the legislation on this subject passed in the last session even though there was ample reason to believe it was unconstitutional on its face. The court, in its decision, doesn't say that the legislature cannot establish levels, but we as a legislative body have to make some examination of it.

Rep. Keyser feels that it is up to us as a legislative body to usurp the authority that is rightfully ours -- not to take any away from the supreme court but to at least keep the authority we have. The bill does not take away any of those services. It just allows the legislature to do what the legislature should do.



Rep. Miles agreed with Rep. Krueger's statements in saying that she disagreed with the language of this bill in that the bill's intent is to restrict the duration of economic assistance. Rep. Addy said that the supreme court, in striking down the limited general assistance law passed through this legislature last year did so on the question of a rationale basis. We can do by legislation anything that has a rationale relationship and furthermore consider the resources of the state in determining what is a necessary level of services. All the supreme court said by its previous ruling was "don't act irrationally -- don't act arbitrarily."

The question was called on the motion to pass as amended, and it CARRIED 10-8.

ACTION AND DISCUSSION ON HB 7: Rep. Addy moved that HB 7 DO PASS. The motion was seconded by Rep. Rapp-Svrcek. In response to a question asked by Rep. Miles, Brenda Desmond, staff attorney, stated there used to be some question as to whether or not a constitutional amendment could simply revive a law that had been declared unconstitutional. She said that she agrees with Mona Jamison's statement on Wednesday that this would not revive the old law. Ms. Desmond said that if this is a concern, one way of dealing with it is to move the date to January of 1987 which would clearly leave the existing law in place until that time. Rep. Krueger feels if we put in a delayed effective, we make it at the conclusion of the 1987 session which would allow us at least to have full hearings on it.

It was Rep. Miles' concern that local governments will be left in a real quandry for a couple of months as far as their liability insurance. She moved to amend the effective date to July 1, 1987. Rep. Gould made a substitute motion to TABLE HB 7 for the purposes of allowing Ms. Desmond to look into the effective date question. He also wished to listen to the testimony on HB 17 and make a comparison of it with this bill. The motion was seconded by Rep. O'Hara and FAILED due to a tie vote. (See roll call vote.) Rep. Miles withdrew her motion to amend the effective date.

In further response to Rep. Miles' question, Ms. Desmond said because subsection 1 is written in the positive, e.g. "the limits of civil liability shall be as provided by law by a 2/3 vote of each house of the legislature," Ms. Desmond believes that this means if the legislature has not established limits that there aren't any. She thinks that subsection 2 needs to be read in view of and together with subsection 1 of the bill.

TESTIMONY OF THE DEPARTMENT OF  
SOCIAL AND REHABILITATION SERVICES  
IN SUPPORT OF HOUSE BILL 9

The Department of Social and Rehabilitation Services supports House Bill 9 which has been introduced by Representative Cal Winslow. This amendment to Article XII, Section 3 of the Montana Constitution is essential in order to provide more discretion to the legislature in the adoption of statutes pertaining to public assistance benefits. On January 16, 1986 the Montana Supreme Court held unconstitutional those provisions of House Bill 843 (passed by the 1985 Montana Legislature) which restricted or denied public assistance to able-bodied persons under age 50 without dependent minor children. In its ruling the court developed a "middle-tier" test which should be applied to all public assistance legislation. This test requires that the state demonstrate two factors:

- 1) that its classification of welfare recipients . . . is reasonable; and
- 2) that its interest in classifying welfare recipients . . . is more important than the people's interest in obtaining welfare benefits.

The court went on to state that there should be a balancing of the rights infringed and the governmental interest to be served by such infringement. Saving money must be balanced against the interest of misfortunate people in receiving financial assistance from the state. For example, if the state were to terminate all "able-bodied" persons from the public assistance program it might meet the first portion of the court's test regarding "reasonableness". It is questionable, however, whether such legislation

would meet the second portion of the test which requires a balancing of the misfortunate welfare recipient's interest in receiving benefits with the state's interest in saving money and encouraging employment.

The Montana Supreme Court is the first court in the nation to establish a middle-tier (heightened scrutiny) test for welfare legislation. It is believed that the court will apply this test not only to the state general relief program but also to federal welfare programs (e.g. medicaid, AFDC, food stamps, etc.) administered by our state. Montana is not required by federal law to adopt these programs but if it does, the federal government will only reimburse the state if eligibility is determined in accordance with federal rules and regulations. In many instances it is unlikely that the federal eligibility rules would pass the higher middle-tier (heightened scrutiny) test adopted by the Montana Supreme Court. The "supremacy clause" would not preclude the application of the middle-tier test in Montana because the federal programs are optional rather than mandated by federal law. If Montana courts determine that a federal eligibility rules does not meet the higher standard of review, then 100% state funds must be used to pay for equivalent welfare assistance.

While House Bill 9 is a step in the right direction, SRS does not believe that it is complete enough to provide to the legislature the discretion normally accorded to it in the adoption of state laws. The Montana Supreme Court developed the middle-tiered test not because public assistance is a fundamental

right, nor because the sections in Article XII are prefaced with the word "shall" but rather because welfare assistance is "reference[d] in the Constitution". In order to place welfare assistance in line with the federal Constitution and the decisions of other state and federal courts it is essential that the equal protection test in Article II, Section 4 be returned to that of a "rational" basis test. The attached amendment to House Bill 9 spells out that rational basis test.

PROPOSED AMENDMENT TO HOUSE BILL 9  
Introduced Bill  
(Re: Amendment to Article XII, Section 3  
of the Montana Constitution)

1. Page 1, line 25.  
Following: "discretion"  
Strike: "designate any level and duration of"  
Insert: "provide such"
2. Page 2.  
Following: line 4  
Insert: (2) "The legislature may in its discretion set eligibility criteria for programs and services, admission to institutions and facilities as well as the duration and level of benefits and services. A law implementing this section does not violate this Constitution if it is supported by any rational basis."  
  
Renumber: subsequent sections
3. Page 2, line 14.  
Following: "legislature to"  
Strike: Remainder of line 14 and all of line 15.  
Insert: "Restrict the scope and duration of welfare programs."
4. Page 2, line 17.  
Following: "legislature to"  
Strike: Remainder of line 17 and all of line 18.  
Insert: "Restrict the scope and duration of welfare programs."

Submitted at the request of  
Department of Social and  
Rehabilitation Services

# STANDING COMMITTEE REPORT

March 27

19 86

Mr. Speaker: We, the committee on JUDICIARY

report HOUSE BILL NO. 9

☒ do pass  
☐ do not pass

☐ be concurred in  
☐ be not concurred in

☒ as amended  
☐ statement of intent attached

REP. TOM HANNAH

Chairman

AMEND CONSTITUTION RELATING TO LEVEL AND DURATION OF ECONOMIC ASSISTANCE

BE AMENDED AS FOLLOWS:

1. Page 1, line 25

Following: "discretion"

Strike: "designate any level and duration of"

Insert: "provide such"

V

MINUTES OF THE MEETING  
PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE  
MONTANA STATE SENATE

MARCH 28, 1986

The first meeting of the Public Health, Welfare and Safety Committee of the 49th Legislature, Second Special Session, was called to order by Chairman Judy Jacobson on Friday, March 28, 1986 at 4:00 p.m. in Room 405 of the State Capitol.

ROLL CALL: All members of the committee were present with the exception of Senators Towe and Newman who were absent. Karen Renne, staff researcher, was also present.

There were many many visitors in attendance. See attachments.

CONSIDERATION OF HOUSE BILL 9: Representative Cal Winslow of House District 89, the chief sponsor of HB 9, gave a brief summary of the bill. This bill is an act to submit to the qualified electors of Montana an amendment to Article XII, Section 3, of the Montana Constitution to allow the Legislature greater discretion in making determinations relating to provisions of economic assistance and social and rehabilitative services to those in need; and providing an effective date.

Representative Winslow stated that this bill came about because of the recent Supreme Court ruling. He then gave a brief history of the welfare provisions up until the present day. Seventy-five percent of the state caseloads are contained within 12 counties and that list continues to keep growing. A priority needs to be established. HB 9 will give the legislature the right to set the priorities.

Dave Lewis, Director of the Department of Social and Rehabilitative Services, spoke in favor of the bill. HB 9 is a step in the right direction, SRS does not feel that it is complete enough to provide to the legislature the discretion normally accorded to it in the adoption of state laws. The Montana Supreme Court developed the middle-tiered test not because public assistance is a fundamental right, nor because the sections of Article XII are prefaced with the word "shall" but rather because welfare assistance is referenced in the Constitution.

Senate Public Health  
Public Health, Welfare and Safety Committee  
Page Two

In order to place welfare assistance in line with the federal constitution and the decisions of other state and federal courts it is essential that the equal protection test in Article II, Section 4 be returned to that of a rational basis test. At the present rate, SRS will have to have another 28 million dollars to cover the increase in public assistance.

Russ Cater, attorney with the Department of Social and Rehabilitative Services, spoke in favor of the bill. Mr. Cater stated that in the Supreme Court ruling the court developed a "middle-tier" test which should be applied to all public assistance legislation. This test requires that the state demonstrate two factors. 1) That is classification of welfare recipients is reasonable; and 2) that its interest in classifying welfare recipients is more important than the people's interest in obtaining welfare benefits. The court went on to state that there should be a balancing of the rights infringed and the governmental interest to be served by such infringement. Saving money must be balanced against the interest of misfortunate people in receiving financial assistance from the state. Mr. Cater handed in written testimony for the committee to review and he also handed in some proposed amendments from the department. See attachments.

Representative John Cobb of House District 42, spoke in support of the bill. He stated that the constitution needs to be changed from "shall provide" to "may provide". He stated that, however, he is opposed to the amendments proposed by the department.

With no further proponents, the chairman called on the opponents.

Judy Carlson, representing the Montana Chapter of the National Association of Social Workers, spoke in opposition to the bill. She stated that this bill has been proposed as a result of frustration and fear. Ms. Carlson handed in written testimony for the committee's consideration. See attachments.

Robert C. Rowe of Missoula spoke in opposition to the bill. He stated that he was attending the meeting as a concerned citizen. He handed in testimony for the committee to review. See attachments.



Adele Fine, representing the Women's Caucus at the University of Montana Law School, spoke in opposition to HB 9. She stated that the referendum to be submitted to the public for vote is extremely misleading. The proper question is whether the Constitution should be changed from "shall" to "may", thus lessening the state's commitment to the poor people, not whether the state should be able to descretionarily set welfare benefit levels. The state already has that power. Ms. Fine handed in written testimony for the committee. See attachments.

Susan Fifield, representing the Montana Low Income Coalition, spoke in opposition to the bill. She stated that they feel there is no need for a constitutional amendment for the following reasons. 1) Already able to limit benefits (workfare, medical and recourse, etc. 2) Montana is a state that is proud of taking care of its own as shown in the past. 3) An amendment challenges the integrity of both the constitution and those who devoted hours to writing it, and 4) MLIC is working on a job task force to develop alternatives concerning jobs. People want to work. We can help them attain this goal and cut down on welfare spending by implementing programs and redirecting federal and state funds that are suppose to be targeted for the low income people. Ms. Fifield handed in written testimony. See attachments.

Jim Murry, representing the AFL-CIO, spoke in opposition to the bill. He handed in written testimony for the committee to review. See attachments.

Debra W. Florer, representing the Butte Community Union and Anaconda Concerned Citizens Coalition, spoke in opposition to HB 9. She stated that her groups are against this bill because legislators already have the right to limit in many ways. They know what the Supreme Court ruling is and they should act accordingly. Jobs are the problem, not money. She asked that the committee not gut the Constitution. The governor has the power to administratively target these job programs. We need more job opportunities not more homeless people. See attachments.

Steve Waldron, representing the Community Health Centers, spoke in opposition to the bill. He asked the committee to act reasonably. He handed out part of the Supreme Court findings in their recent suit. See attachments.

Jim Smith, representing the Human Resources and Development Council, spoke is opposition to the bill.

Senate Public Health  
March 28, 1986  
Page Four

Chester Kinsey, representing the Montana Senior Citizens Association, spoke in opposition to the bill. Mr. Kinsey stated that his group is in opposition to the bill because it opens the door to age discrimination. The wording is designed to make nearly impossible to understand what its actual effect is on the people.

Jo Lindberg, representing the Concerned Citizens Coalition, spoke in opposition to the bill. She stated that to change the constitution would give SRS the freedom to decide whether or not the poor receive aid. Perhaps some people do misuse the program, however, she was not speaking for them. The unemployed does not necessarily mean lazy, stupid or unproductive. Poor people deserve the same opportunity to work and build Montana as anyone else.

Carolyn Goode, representing the Concerned Citizens Coalition, spoke in opposition to the bill. Mrs. Goode is a disabled citizen and stated that she was concerned about the benefits which would be cut off from her family and others in a like situation. She receives 336 dollars per month on which to live. She stated that just because her legs do not work does not mean that her brain doesn't.

Diane Sands, representing the Women's Lobbyist Fund, spoke in opposition to the bill. Their main concern is the changing of "shall" to "may".

John Ortwein, representing the Montana Catholic Conference, spoke against the bill. The responsibility for alleviating the plight of the poor falls upon all members of society. As individuals, all citizens have a duty to assist the poor through acts of charity and personal commitment. But private charity and voluntary action are not sufficient. It is a moral responsibility to help the poor by working collectively through government to establish just and effective public policies.

Senator Jacobson stated that because of lack of time, if there were others who would like to stand and state their name in opposition to the bill could do so. The following stood in opposition: Del Rodrigues, Gaile Rodregues and Lois Durand.

The meeting was recessed at 5:05. Senator Joacobson stated that the committee would take executive action as soon as possible.

Senate Public Health  
March 28, 1986  
Page Five

The committee reconvened at 5:45 p.m.

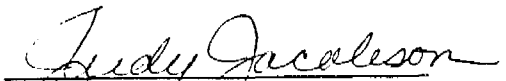
DISPOSITION OF HOUSE BILL 9:

A motion was made by Senator Stephens that HB 9 Be Concurred In. Motion failed. See Roll Call Vote Sheet.

A motion was made by Senator Towe that the vote be reversed to read. House Bill 9 BE NOT CONCURRED IN. Motion carried. See Roll Call Vote Sheet.

Senator Jacobson stated that this would still be debated on order of business No. 8 being as this would change the Constitution.

ADJOURN: With no further business, the meeting was adjourned.

  
Senator Judy Jacobson

eg

TESTIMONY OF THE DEPARTMENT OF  
SOCIAL AND REHABILITATION SERVICES  
IN SUPPORT OF HOUSE BILL 9

The Department of Social and Rehabilitation Services supports House Bill 9 which has been introduced by Representative Cal Winslow. This amendment to Article XII, Section 3 of the Montana Constitution is essential in order to provide more discretion to the legislature in the adoption of statutes pertaining to public assistance benefits. On January 16, 1986 the Montana Supreme Court held unconstitutional those provisions of House Bill 843 (passed by the 1985 Montana Legislature) which restricted or denied public assistance to able-bodied persons under age 50 without dependent minor children. In its ruling the court developed a "middle-tier" test which should be applied to all public assistance legislation. This test requires that the state demonstrate two factors:

- 1) that its classification of welfare recipients . . . is reasonable; and
- 2) that its interest in classifying welfare recipients . . . is more important than the people's interest in obtaining welfare benefits.

The court went on to state that there should be a balancing of the rights infringed and the governmental interest to be served by such infringement. Saving money must be balanced against the interest of misfortunate people in receiving financial assistance from the state. For example, if the state were to terminate all "able-bodied" persons from the public assistance program it might meet the first portion of the court's test regarding "reasonableness". It is questionable, however, whether such legislation

would meet the second portion of the test which requires a balancing of the misfortunate welfare recipient's interest in receiving benefits with the state's interest in saving money and encouraging employment.

The Montana Supreme Court is the first court in the nation to establish a middle-tier (heightened scrutiny) test for welfare legislation. It is believed that the court will apply this test not only to the state general relief program but also to federal welfare programs (e.g. medicaid, AFDC, food stamps, etc.) administered by our state. Montana is not required by federal law to adopt these programs but if it does, the federal government will only reimburse the state if eligibility is determined in accordance with federal rules and regulations. In many instances it is unlikely that the federal eligibility rules would pass the higher middle-tier (heightened scrutiny) test adopted by the Montana Supreme Court. The "supremacy clause" would not preclude the application of the middle-tier test in Montana because the federal programs are optional rather than mandated by federal law. If Montana courts determine that a federal eligibility rules does not meet the higher standard of review, then 100% state funds must be used to pay for equivalent welfare assistance.

While House Bill 9 is a step in the right direction, SRS does not believe that it is complete enough to provide to the legislature the discretion normally accorded to it in the adoption of state laws. The Montana Supreme Court developed the middle-tiered test not because public assistance is a fundamental

right, nor because the sections in Article XII are prefaced with the word "shall" but rather because welfare assistance is "reference[d] in the Constitution". In order to place welfare assistance in line with the federal Constitution and the decisions of other state and federal courts it is essential that the equal protection test in Article II, Section 4 be returned to that of a "rational" basis test. The attached amendment to House Bill 9 spells out that rational basis test.

PROPOSED AMENDMENT TO HOUSE BILL 9  
Introduced Bill  
(Re: Amendment to Article XII, Section 3  
of the Montana Constitution)

1. Page 1, line 25.  
Following: "discretion"  
Strike: "designate any level and duration of"  
Insert: "provide such"
  2. Page 2.  
Following: line 4  
Insert: (2) "The legislature may in its discretion set eligibility criteria for programs and services, admission to institutions and facilities as well as the duration and level of benefits and services. A law implementing this section does not violate this Constitution if it is supported by any rational basis."
- Renumber: subsequent sections
3. Page 2, line 14.  
Following: "legislature to"  
Strike: Remainder of line 14 and all of line 15.  
Insert: "Restrict the scope and duration of welfare programs."
  4. Page 2, line 17.  
Following: "legislature to"  
Strike: Remainder of line 17 and all of line 18.  
Insert: "Restrict the scope and duration of welfare programs."

Submitted at the request of  
Department of Social and  
Rehabilitation Services

*Exhibit 1-B*  
*3-28-86*  
*11 0 0*

? FOR amending the constitution to allow the legislature  
discretion to restrict the scope and duration of wel-  
fare programs.

? AGAINST amending the constitution to allow the legisla-  
ture discretion to restrict the scope and duration of  
welfare programs.

*Exhibit 1-a*  
*3-28-86*  
*11 R O*





# National Association of Social Workers



Exhibit 2  
3-28-86  
JLg.

TESTIMONY BEFORE THE SENATE PUBLIC HEALTH COMMITTEE  
ON HB 9 TO AMEND THE CONSTITUTION'S ARTICLE XII Sec. 3

March 28, 1986

I am Judith H. Carlson speaking for the Montana Chapter of the National Association of Social Workers, NASW. We oppose any constitutional amendment whose purpose is to dilute this state's commitment to helping people in their time of need.

This bill has been proposed as a result of frustration and fear. Frustration has been expressed by Representative Winslow and others because a well-intentioned attempt to curtail state expenditures was struck down by the Supreme Court. Fear has been expressed by the Department of Social and Rehabilitation Services that, because of one Supreme Court hearing, all people are going to sue the state to meet all their needs.

Rather than being ruled by frustration and fear, the NASW suggests support of the positive approach of HB 12 to provide job search and job training for General Assistance recipients. Even without adequate jobs, this is at least a positive approach with some chance of success. It has worked elsewhere.

<sup>HB 9</sup>  
This bill would put on the ballot wording which sounds innocuous enough; and who wouldn't vote for allowing the

"legislature to designate the level of economic assistance and services to those in need?" Everyone thinks that is the proper role of the legislature. What is hidden in this issue is that the state is changing its commitment from a "shall" to a "may at its discretion." Come the next session of the legislature, a yea vote by the public will be interpreted <sup>by some</sup> to be a clarion call for major cutbacks in all SRS programs.

It is hard to argue law with a lawyer. But it is my opinion that the state <sup>legislature</sup> already has the authority sought in this amendment. Right now the Legislature can and does determine how programs are administered - will it be directly by the state, by the counties, by private non-profits groups or any combination. Right now the Legislature can and does decide that everyone must work if they are able as a condition of the receipt of general assistance. Right now the Legislature can and does decide on work registration requirements, on the level of assets or resources for eligibility and on the income levels of assistance.

Because one case has been lost (a case incidentally which was thought to be unconstitutional at the time) is not enough reason to push the panic button.

NASW urges you to vote "do not pass" on HB 9 and instead support HB 12 with a do pass - a vote for a positive approach.

Judith H. Carlson, LSW, ACSW

Exhibit # 2  
3-28-86  
H.B. 9

TESTIMONY OF ROBERT C. ROWE

Mr. Chairman, Members of the Committee, my name is Robert C. Rowe, of Missoula. Although I am an attorney, I am here speaking as a concerned Montanan. My testimony addresses four points: (1) Public assistance in meeting basic needs is recognized as deserving constitutional protection; (2) Such assistance is - and should be - protected by the Montana Constitution; (3) Abridgment of the right to assistance should be subject to heightened judicial scrutiny; (4) So-called rational basis scrutiny should not be incorporated in the Montana Constitution.

I. PUBLIC ASSISTANCE IN MEETING BASIC NEEDS IS RECOGNIZED AS DESERVING CONSTITUTIONAL PROTECTION.

Provision for basic, subsistence needs has been recognized as essential to participation in our society. Without basic levels of assistance, other rights, such as First Amendment rights of speech, association, and even religion ~~are~~ devalued. Realistically, how can one exercise the right to vote without shelter? How can one exercise the right to seek employment without clothes, a stable address, and a telephone at which to receive messages?

As members of this Committee are aware, the fundamental importance of public assistance was recognized by the United States Supreme Court in Goldberg v. Kelly, 397 U.S. 254 (1970), which found public assistance to be so essential that it could not be terminated without first holding a due process hearing:

Welfare, by meeting the basic demands of subsistence, can help bring within the reach of the poor the same opportunities that are available to others to participate meaningfully in the life of the community . . . . Public assistance, then, is not mere charity, but a means to 'promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity.'

\* \* \*

We have come to recognize that forces not within the control of the poor contribute to their poverty.

Id. at 264-265.

Similarly, legislative and administrative determinations of who is and is not eligible for a variety of public benefits programs have been closely examined by the courts. See, for example, USDA v. Moreno, 413 U.S. 528 (1973), and USDA v. Murray, 413 U.S. 508 (1973), concerning food stamp eligibility. See, also, New Jersey Welfare Rights Organization v. Cahill, 411 U.S. 619 (1973), concerning a state limitation on AFDC eligibility. Professor Laurence Tribe identifies these cases as involving a "heightened level of evenhandedness," a form of middle-tier scrutiny. American Constitutional Law (1978), 1118.

II. PUBLIC ASSISTANCE IS - AND SHOULD BE - PROTECTED BY THE MONTANA CONSTITUTION.

The United States Constitution is nearly two hundred years old. Nonetheless, as noted, in applying the federal Constitution, courts have recognized the vital significance of basic economic rights in today's world.

Article XII, Section 3(3) of the Montana Constitution states the "legislature shall provide" assistance for those who may have need for the aid of society. In adopting this section, the 1972 Constitutional Convention recognized that American society had changed dramatically since the federal Constitution was adopted in 1789: No longer was there a frontier to absorb the displaced and the disadvantaged; many of our own grandparents came to Montana as "welfare recipients" of homesteads on public lands.

Constitutions impose stern requirements. First Amendment rights are frequently controversial, and are often enforced at the expense of other societal interests; so too, with rights under the Thirteenth and Fourteenth Amendments. Recently, significant portions of the Gramm-Rudman Act were invalidated by a three judge Federal District Court on seemingly arcane separation of power grounds.

It is in the difficult cases that the greatness of constitutional government is affirmed. Montana has a great Constitution, of which all Montanans are justifiably proud. It should not be amended lightly.

The amendment now proposed is nothing other than an attempt to evade the Montana Constitution's basic requirements. It is an amendment of convenience. In seeking an easy way to avoid obligations to our less fortunate fellow Montanans, it demeans both the Montana Constitution and the idea of constitutional government. It should be rejected.

III. ABRIDGMENT OF THE RIGHT TO ASSISTANCE SHOULD BE SUBJECT TO HEIGHTENED JUDICIAL SCRUTINY.

In Butte Community Union v. Lewis, 43 St.Rptr. 65 (1986), the Montana Supreme Court held that, "because the constitutional convention delegates deemed welfare to be sufficiently important to warrant reference in the Constitution, we hold that a classification which abridges welfare benefits is subject to a heightened scrutiny under an equal protection analysis . . . ." Id. at 67.

According to Professor Laurence Tribe:

(T)he all-or-nothing choice between minimum rationality and strict scrutiny ill-suits the broad range of situations arising under the equal protection clause, many of which are best dealt with neither through the virtual rubber-stamp of truly minimal review nor through the virtual death-blow of truly strict scrutiny, but through methods more sensitive to risks of injustice than the former and yet less blind to the needs of governmental flexibility than the latter.

American Constitutional Law (1978), 1089. (Emphasis supplied.)

The District Court in Butte Community Union was presented extensive testimony concerning the composition of the General Assistance population and the effects of limiting assistance; a legislative assembly would be hard-pressed to receive and consider such evidence. At least one State official has stated that, based upon a study of the job-readiness of many General Assistance recipients (despite their clear deserve to obtain employment), he would not now support General Assistance cuts.

SRS itself has stated it no longer endorses arbitrary termination of so-called "able bodied" recipients based upon age.

The middle-tier standard applied in Butte Community Union is not a road block to responsible legislation. Rather, it protects the appropriate exercise of legislative flexibility referred to by Professor Tribe. The test requires that the classification be reasonable and that the State's intent be balanced against the interest of the misfortunate. The legislature should not amend the Constitution to insulate its unreasonable acts from judicial review when those acts demonstrably harm those the legislature is itself charged to represent.

#### IV. RATIONAL BASIS SCRUTINY SHOULD NOT BE GRAFTED TO THE MONTANA CONSTITUTION.

Even under rational basis scrutiny, House Bill 843 would have failed, as made clear by the Butte Community Union concurrence of Justice Gulbrandson and Chief Justice Turnage. As proposed in the House by SRS, rational basis scrutiny would have sweeping application; amendment of our Constitution should not be undertaken so lightly, nor upon such short notice.

Incorporation of rational basis scrutiny into the Constitution itself is analogous to various "court-stripping" proposals introduced in Congress in order to limit the authority of federal courts to enforce the law of the land. Here, the limitation would itself be constitutionalized.

Constitutions confer substantive rights and procedural

protections to the citizenry. These rights are interpreted and enforced by the courts. It is inherently unwise to place the judicial standard within the Constitution itself. First, such an approach at least raises concerns analogous to separation of power. Second, the standard of review is best determined by the Supreme Court, which is charged with applying the Constitution in a multitude of cases, even as it rules in each particular case. Third, even a statutory rational basis test would require judicial interpretation.

Traditionally, rational basis scrutiny has been applied to grant almost blanket discretion to legislative determinations. Recently, the United States Supreme Court has begun to apply rational basis "with teeth." For example, the Court recently applied rational basis to invalidate a Texas municipal ordinance barring group homes for the mentally retarded (City of Cleburne v. Cleburne Living Center, No. 84-1274) and an Alabama tax on foreign insurance companies (Metropolitan Life Insurance Co. v. Ward, No. 83-1274). Justice Gulbrandson's concurrence in Putte Community Union indicates the Montana Court may be prepared to follow a similar approach.

To achieve the amendment's intent, the legislature would be required to adopt language actually interpreting "rational basis." Clearly, the responsible course is to defer to the courts whose duty it has been since at least 1803 to interpret and enforce the Constitution. As stated by Chief Justice John



Marshall:

(A)ll those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void.

\* \* \*

It is emphatically the province of the judicial department to say what the law is. Those who apply the rule to the particular cases, must of necessity expound and interpret that rule.

Marbury v. Madison, 5 U.S. (1 Cranch) 176-77 (1803). (Emphasis supplied.)

RESPECTFULLY SUBMITTED this 27<sup>th</sup> day of March, 1986.

Robert C. Rowe

ROBERT C. ROWE  
216 East Central  
Missoula, MT 59801

*Madam Chair*

~~Mr. Chairman~~ and members of the Senate Judiciary Committee:

My name is Adele Fine. I am here to speak to you on behalf of the Women's Law Caucus, a student organization at the University of Montana Law School.

I will focus my testimony on some of the values underlying the middle-tier test adopted by the Montana Supreme Court in the Butte Community Union case. I will also address some of the equitable concerns as they pertain to welfare funding in general.

In the BCU case, the Supreme Court rejected the idea that the right to welfare assistance was a fundamental right in recognition of the State's need for some discretionary power due to its limited resources. The Court also refused to give only minimal scrutiny to the welfare statute at issue because of the constitutional mandate from the people of Montana to the state government to provide economic assistance to those in need.

The middle tier test adopted by the Court seeks to strike a middle ground. It allows the State flexibility, but requires the State to justify restrictions on welfare benefits with a factual showing of their reasonableness. This requirement protects a low-income person's needs from being arbitrarily overrun by the State.

The middle-tier test is essentially a fairness test. It balances the State's needs evenly with the needs of poor people. What this proposed constitutional amendment would do is tip the balance so that the State's power would become virtually supreme while the low-income person's substantive right assistance would be lost.

It must not be forgotten that this right to welfare assistance is important. It is in many instances the only thing that stands between having a roof overhead and sleeping under a bridge. Even at the federal level, the Gramm-Rudman Act exempted federally-funded welfare programs from cuts. Why? Because Congress recognized that programs like AFDC, WIC, SSI, Food Stamps and Medicaid provide for life's basic necessities, the stuff that people with nothing need to survive. The General Assistance program in Montana serves the same purpose. The middle-tier test and Article XII as it is presently written protect this interest in survival from getting lost in budget panic such as we are now experiencing, when it becomes easier for us to abrogate our long-term obligations in the interest of short-term crisis management. For these reasons, we should welcome the middle-tier test and not try to circumvent it.

About the equitable issues involved. . . The State subsidizes various things in various ways, but rarely does anyone stop to ponder whether the benefits and burdens of these subsidies fall out fairly. Last session, for example, the Legislature

had a chance to eliminate in some instances the state tax deduction for federal income taxes paid. This deduction is a form of subsidization and its elimination would have raised about 26 million dollars. Remembering that a monthly welfare check is literally a life preserver, question: how much of a hardship would the elimination of the tax deduction have imposed compared to the hardship a welfare recipient would suffer if his or her assistance were taken away, and arbitrarily at that? Question: how much of a benefit is gained by lowering Burlington Northern's taxes compared to the benefits of cutting welfare, if by cutting welfare you encourage homelessness among people who may or may not have job training for jobs that don't even exist, indeed, for jobs that Burlington Northern took away?

With these questions and the points made earlier about the middle-tier test in mind, we urge you to reject House Bill 9. Thank you.

*Exhibit #4*  
*3-28-86*  
*H.B. 9*

NAME: Susan K Fifield DATE: 3/28/86ADDRESS: Box 232 ; Clinton, MT 59825PHONE: 825-6636REPRESENTING WHOM? MLIC - LIGHTAPPEARING ON WHICH PROPOSAL: HB<sup>#9</sup>DO YOU: SUPPORT?        AMEND?        OPPOSE? XCOMMENTS: We feel there is no need for a  
Constitutional Amendment for the following  
reasons:1.) Already Able to limit benefits  
(work fare, medical resources, ect.)2.) MT is a state that is Proud  
of taking care of it's own-as shown  
in the past.3.) An Amendment challenges the integrity  
of both the constitution & those who  
devoted hours to writing it.4.) MLIC is working on a job task  
force to develop alternatives concerning jobs.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

People WANT TO WORK! We can help  
them attain this goal & Cut down on  
Welfare Spending by implementing programs  
& redirecting Fed. & ~~State~~ State funds that  
are suppose to be targeted for ~~the~~ low-income

to these people.

If this had been done in the past there probably would be no need to be here today!

~~Thank you,~~

One More thing is there <sup>are</sup> ~~is~~ families on G.A. who this would effect.

~~The~~ The Economy is one of the biggest factors for the rise in G.A. recipients

This amendment does also allow for cuts to be made to our disabled and Senior population.

One source of revenue is the Federal Tax Deduction that is allowed on State Taxes. That alone would more than cover the G.A. program.

# MONTANA LOW-INCOME COALITION



P.O. Box 1029  
107 West Lawrence  
Helena, Montana 59624  
(406) 449-8801

Statewide: MONTANA ALLIANCE FOR PROGRESSIVE POLICY  
MONTANA HRDC DIRECTOR ASSOCIATION  
MONTANA LEGAL SERVICES EMPLOYEES  
LOW INCOME SENIOR CITIZENS ADVOCATES  
MONTANA SENIOR CITIZEN ASSOCIATION  
NORTHERN ROCKIES ACTION GROUP

Helena: LAST CHANCE PEACEMAKERS COALITION

Missoula: LOW INCOME GROUP FOR HUMAN TREATMENT  
NATIVE AMERICAN SERVICES AGENCY

Great Falls: CONCERNED CITIZENS COALITION

Butte: BUTTE COMMUNITY UNION

Bozeman: BOZEMAN HOUSING COALITION

## FACT SHEET

March 1986

### Why A Constitutional Amendment is Not Needed to Solve Welfare Costs

1. Will the proposed amendment affect the integrity of the Constitution and human rights?

Montana has one of the finest constitutions in the country, and is far reaching in protecting human rights. Among these are the right to the basic necessities to sustain life, such as food, clothing and shelter. The proposed constitutional amendment would abrogate those rights and relegate them to the whim or good will of whatever political party is in power at the moment. We believe the constitutional framers intended more protection than this for needy Montanans. Constitutional amendments should not be taken lightly and not considered hastily in a special session where debate is limited by time constraints. In addition, in 1992, the Montana electorate will have the opportunity to decide upon a constitutional convention where changes can be comprehensively debated and acted upon.

2. Should the Constitution be changed to solve budget problems?

Obviously, it would be totally unrealistic to change the Constitution each time the state is faced with serious budget problems where other alternatives exist but have not been tried.

The goal to limit GA by the 1985 legislature was to save money. There is nothing in the constitution which prevents the legislature from saving money and the it still has the power to set limits. In fact, does so now by determining eligibility requirements for welfare. MLIC supports the goal of reducing welfare costs through just alternatives. MLIC and it's member groups have long been calling for employment and training alternatives. We have worked diligently for the past year to get the Job Partnership Training Act (JPTA) programs to provide increased opportunities for Montanans receiving general assistance. We have submitted proposals to the two Private Industry Councils, the Joint Training Coordinating Council and to the Governor. All of these requests fell on deaf ears. Last year, only 7% of JPTA placements went to GA recipients. The state JPTA plan continues to set a goal of only 2% for GA placements. MLIC recommended goals of up to 60%, and if our recommendations had been followed there would be no need for a GA supplemental appropriation at this time.

3. What are the alternatives?

Because of the failure of JPTA programs to respond to the job/training needs of GA people, and thereby reduce welfare costs, MLIC and it's member groups decided to join with SRS and other state organizations to develop innovative, job/training, job creation approaches, many of which have been very successful in other states in reducing welfare costs.

SRS has taken these ideas and has developed six (6) pilot projects to be tried around the state completed, evaluated and recommendations made to the 1987 legislature. These projects, when adopted, should greatly reduce general assistance costs and eliminate the need for the Constitutional amendment. We recommend legislators defeat the proposed amendment, support job/training programs which will reduce welfare expenditures, preserve a just constitution and human dignity for all Montanans who are now in need or will be in the future.



JAMES W. MURRY  
EXECUTIVE SECRETARY

Box 1176, Helena, Montana

ZIP CODE 59624  
406/442-1708

TESTIMONY OF JIM MURRY, BEFORE THE HOUSE JUDICIARY COMMITTEE ON HOUSE BILL 9  
FOR A CONSTITUTIONAL AMENDMENT RESTRICTING PUBLIC ASSISTANCE -- MARCH 20, 1986

-----

Mr. Chairman and members of the Committee, my name is Jim Murry, and I'm appearing here on behalf of the Montana State AFL-CIO in opposition to House Bill 9.

There is no doubt that we are facing hard economic times, both here in Montana and across the country. The very fact that the Legislature is meeting to discuss curtailing welfare benefits shows that there is an economic crisis. If only a few people needed public assistance, there would be no question that Montana has the ability to support the needy.

Now Montana's ability to support those who need help is being called into question. But the question is not really can we help, but how can we not help?

How can we not help people in need? This question comes at a time when more and more people are losing their jobs, losing their businesses, losing their farms and ranches, while being forced to seek public assistance just to survive.

According to an Associated Press story that appeared last Monday, only 18,000 new jobs will be created in Montana in the 1984 - 1990 period. And the Montana Department of Labor and Industry projects nearly half of those jobs will be in the lower-paying service sector.

Members of the committee, there are now -- today -- almost 36,000 Montanans "officially" out of work. That means there are two unemployed workers for every new job to be created from now until 1990.

Here in Montana, the latest figures show 35,700 people are unemployed -- a 9.3 percent unemployment rate.

But these figures don't include those workers who are so discouraged they no longer even look for work, and they don't include those workers who work part-time because full-time work is unavailable.

When you add those individuals to the "officially" unemployed, you get the real unemployment rate. In Montana last month, the real unemployment was 16.74 percent, or 63,913 people. To put that number into perspective, that is equal to the combined populations of Missoula, Malta, Lewistown, Libby, Ennis, Polson, Thompson Falls, Cut Bank and my hometown of Laurel.



JAMES W. MURRY  
EXECUTIVE SECRETARY

Box 1176, Helena, Montana

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406/442-1708

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EXHIBIT 6  
3-28-86



What are these people to do? Some suggest they move to other states to look for work -- places like Texas, or California or Florida. But the unemployment problem is there as well. In those three states, more than 3 million people are unemployed, underemployed or too discouraged to look for work any longer.

Unemployed Montanans are not going to find jobs outside the state. Nationwide, there are 8.5 million people "officially" out of work. But real unemployment means more than 15 million Americans are unemployed, underemployed or too discouraged to seek work.

Not only is there a misconception about how many people truly are out of work, but there is a misunderstanding of what kind of protection these unemployed workers have. A study by the National AFL-CIO showed that 10 years ago, 75 percent of the unemployed workers received unemployment insurance compensation. By 1984, that figure dropped to only 26 percent.

In Montana, a similar situation exists. As of 1985, only 29 percent of unemployed workers received unemployment insurance benefits.

So a desperate need for public assistance has been growing. Since 1980, general assistance caseloads have increased 250 percent.

The issue before us today is, are we going to turn our backs on Montanans in need?

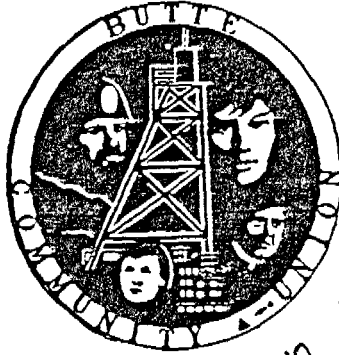
Mr. Chairman and members of the Committee, the Montana Constitution is a good one. It establishes the welfare of people as its priority. It's not a document to be treated lightly or tampered with indiscriminately.

We acknowledge the financial problems facing the state of Montana today. We've given you numbers that you can attach to the faces of Montanans who are in trouble today.

We urge you, in your deliberations, not to act in haste in amending our Constitution.

March 27, 1986

March 28/1986



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(782-0670)

GENERAL RELIEF and <sup>NO</sup> JOBS

Montana Law currently limits General Relief (GR) benefits to 47% of the poverty level, as with AFDC limits.

Montana's \$10 million federally funded Jobs Training Program (JTPA) is not targeted to benefit such low income people. Only 7% of enrollees last year were GR recipients. About half the funds pay for Job Service staff, with most of the rest going to businesses for wage subsidies.

Montana's \$6 million federally-funded Community Development Block Grant Program (CDBG) is not targeted to benefit such low income people. Half the jobs and other benefits are supposed to go to persons whose income may range up to 600% of the GR income level. (This is referred to as "low and moderate income".) The rest of the benefits may go to anyone, including the very wealthy, and they usually do.

Many other "economic development" programs contain no requirement that jobs for the poor should be one benefit of public subsidies. ("Build Montana" for whom?)

Welfare for corporations gets more support than welfare for the truly needy. (Cut coal taxes, cut BN taxes.)

PLEASE DON'T GUT THE MONTANA CONSTITUTION. THE GOVERNOR HAS THE POWER TO ADMINISTRATIVELY TARGET THESE JOBS PROGRAMS. WE NEED MORE JOB OPPORTUNITIES, NOT MORE HOMELESS PEOPLE.

*Debra E. Florer*

DEBRA E. FLORER  
BOARD OF DIRECTORS OF  
BCU & Rep. for ACC

Libir #7  
3-28-86  
H.B. 9

We proceed to develop our own middle-tier test for determining whether HB 843 violates the Montana Constitution. We do so because although a right to welfare is not contained in our Declaration of Rights, it is sufficiently important that art. XII, sec. 3(3) directs the Legislature to provide necessary assistance to the misfortunate. A benefit lodged in our State Constitution is an interest whose abridgement requires something more than a rational relationship to a governmental objective.

A need exists to develop a meaningful middle-tier analysis. Equal protection of the law is an essential underpinning of this free society. The old rational basis test allows government to discriminate among classes of people for the most whimsical reasons. Welfare benefits grounded in the Constitution itself are deserving of great protection.

In reviewing the textual discussions by constitutional authorities and the insightful dissents of Justices Marshall, Brennan, Powell, and Stevens we have distilled a test we think is sound. Where constitutionally significant interests are implicated by governmental classification, arbitrary lines should be condemned. Further, there should be balancing of the rights infringed and the governmental interest to be served by such infringement.

\* We hold that a finding that HB 843 is constitutional requires the State to demonstrate two factors: 1) that its classification of welfare recipients on the basis of age is reasonable; and 2) that its interest in classifying welfare recipients on the basis of age is more important than the people's interest in obtaining welfare benefits. not arbit.  
(age is)  
savings &  
min. imp.  
(welfare)

A reasonable classification is one which is not arbitrary. The State has failed to show that misfortunate people under the age of 50 are more capable of surviving without assistance than people over the age of 50. Broad generalizations, concluding that those who are 49 years of age can retrain or relocate while those who are days older cannot, are arbitrary.

Next, the State's objective in enacting HB 843 - saving money - must be balanced against the interest of misfortunate people under the age of 50 in receiving financial assistance from the State. The trial record does not show the State to be in such a financially unsound position that the welfare benefit, granted constitutionally, can be abrogated. ?

This Court does not pass on the merits of welfare. The respective members of the Court may well have different views about the public policy justifying public assistance. These matters are not properly treated by an appellate court. Our task is simply to determine constitutionality of the statute. On that subject we are of one mind.

We find the provisions of HB 843, which restrict or deny general assistance benefits to "able-bodied persons under the age of fifty who do not have minor dependent children", to be unconstitutional. A permanent injunction is hereby issued prohibiting Dave Lewis, Director

# STANDING COMMITTEE REPORT

March 28, 1986

MR. PRESIDENT

We, your committee on.....**PUBLIC HEALTH, WELFARE AND SAFETY**.....

having had under consideration.....**HOUSE BILL**..... No. **9**

third reading copy ( blue )  
color

**AMEND CONSTITUTION RELATING TO LEVEL AND DURATION OF  
ECONOMIC ASSISTANCE**

**WINSLOW (STEPHENS)**

Respectfully report as follows: That.....**HOUSE BILL**..... No. **9**

~~XXXXXX~~

~~XXXXXX~~

**BE NOT CONCURRED IN**

**SENATOR JUDY JACOBSON**

Chairman.